

# **Exhibit 1**



## Service of Process Transmittal Summary

**TO:** Representation Services Advisory Team  
CT CORPORATION SYSTEM  
330 N BRAND BLVD STE 700  
GLENDALE, CA 91203-2336

**RE:** Process Served in Georgia

**FOR:** Business Filings Incorporated (Domestic State: DE)

### ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

**TITLE OF ACTION:** FORMULA CONSTRUCTION GROUP, LLC vs. BUSINESS FILINGS INCORPORATED

**CASE #:** 23C03353S3

**PROCESS SERVED ON:** C T Corporation System, Lawrenceville, GA

**DATE/METHOD OF SERVICE:** By Process Server on 05/18/2023 at 12:00

**JURISDICTION SERVED:** Georgia

**ACTION ITEMS:** CT has retained the current log, Retain Date: 05/19/2023, Expected Purge Date: 05/24/2023

Image SOP

Email Notification, Representation Services Advisory Team cls-rsa@wolterskluwer.com

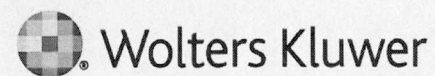
Email Notification, RAD Team rad@bizfilings.com

Email Notification, Amy Lawrence cls-ctsopsupport@wolterskluwer.com

**REGISTERED AGENT CONTACT:** C T Corporation System  
289 S. Culver St.  
Lawrenceville, GA 30046  
877-564-7529  
MajorAccountTeam2@wolterskluwer.com

**REMARKS:** Transmittal has been edited to correct delivery distribution

The information contained in this Transmittal is provided by CT for quick reference only. It does not constitute a legal opinion, and should not otherwise be relied on, as to the nature of action, the amount of damages, the answer date, or any other information contained in the included documents. The recipient(s) of this form is responsible for reviewing and interpreting the included documents and taking appropriate action, including consulting with its legal and other advisors as necessary. CT disclaims all liability for the information contained in this form, including for any omissions or inaccuracies that may be contained therein.



## PROCESS SERVER DELIVERY DETAILS

**Date:** Thu, May 18, 2023  
**Server Name:** Drop Service

Entity Served	BUSINESS FILINGS INCORPORATED
Case Number	23C03353-S3
Jurisdiction	GA

Inserts		



IN THE STATE COURT OF GWINNETT COUNTY

STATE OF GEORGIA

FORMULA CONSTRUCTION GROUP, LLC

CIVIL ACTION

NUMBER:

PLAINTIFF

23-C-03353-S3

VS.

BUSINESS FILINGS INCORPORATED

DEFENDANT

SUMMONS

TO THE ABOVE NAMED DEFENDANT:

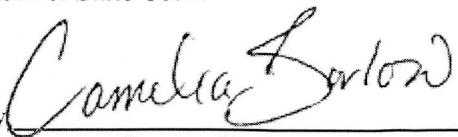
You are hereby summoned and required to file with the Clerk of said court and serve upon the Plaintiff's attorney, whose name and address is:

W. Thomas Lacy, Jr.  
Lindsey & Lacy, PC  
200 Westpark Drive, Suite 280  
Peachtree City, GA 30269

an answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This \_\_\_\_\_ day of 16th day of May, 2023, 20\_\_\_\_\_.

Tiana P. Garner  
Clerk of State Court

By   
Deputy Clerk

INSTRUCTIONS: Attach addendum sheet for additional parties if needed, make notation on this sheet if addendum sheet is used.



## General Civil and Domestic Relations Case Filing Information Form

☐ Superior or ☒ State Court of GWINNETT County

## For Clerk Use Only

Date Filed \_\_\_\_\_  
MM-DD-YYYYCase Number 23-C-03353-S3

## Plaintiff(s)

FORMULA CONSTRUCTION GROUP, LLC

Last First Middle I. Suffix Prefix

Last First Middle I. Suffix Prefix

Last First Middle I. Suffix Prefix

Last First Middle I. Suffix Prefix

Plaintiff's Attorney W. Thomas Lacy, Jr.

## Defendant(s)

BUSINESS FILINGS INCORPORATED

Last First Middle I. Suffix Prefix

Last First Middle I. Suffix Prefix

Last First Middle I. Suffix Prefix

Last First Middle I. Suffix Prefix

Bar Number 431032 Self-Represented ☐

## Check One Case Type in One Box

## General Civil Cases

- ☐ Automobile Tort
- ☐ Civil Appeal
- ☒ Contract
- ☐ Garnishment
- ☐ General Tort
- ☐ Habeas Corpus
- ☐ Injunction/Mandamus/Other Writ
- ☐ Landlord/Tenant
- ☐ Medical Malpractice Tort
- ☐ Product Liability Tort
- ☐ Real Property
- ☐ Restraining Petition
- ☐ Other General Civil

## Domestic Relations Cases

- ☐ Adoption
- ☐ Dissolution/Divorce/Separate Maintenance
- ☐ Family Violence Petition
- ☐ Paternity/Legitimation
- ☐ Support – IV-D
- ☐ Support – Private (non-IV-D)
- ☐ Other Domestic Relations

## Post-Judgment – Check One Case Type

- ☐ Contempt
- ☐ Non-payment of child support, medical support, or alimony
- ☐ Modification
- ☐ Other/Administrative

- ☐ Check if the action is related to another action(s) pending or previously pending in this court involving some or all of the same parties, subject matter, or factual issues. If so, provide a case number for each.

Case Number \_\_\_\_\_

Case Number \_\_\_\_\_

- ☒ I hereby certify that the documents in this filing, including attachments and exhibits, satisfy the requirements for redaction of personal or confidential information in O.C.G.A. § 9-11-7.1.

- ☐ Is an interpreter needed in this case? If so, provide the language(s) required. \_\_\_\_\_  
Language(s) Required

- ☐ Do you or your client need any disability accommodations? If so, please describe the accommodation request.

**FORMULA CONSTRUCTION  
GROUP, LLC**

V.

**Defendant.**

) CIVIL ACTION NO. \_\_\_\_\_  
)  
) 23-C-03353-S3

1

**FACTUAL SITUATION**  
**THE UNDERLYING LAWSUIT AND FINAL JUDGMENT**

4.

On October 3, 2018, Michael and Natalie Appelt filed suit against Formula Construction and other entities in the State Court of Fulton County, Georgia (Civil Action No. 18EV004800) (the "Underlying Lawsuit"). A copy of Complaint For Damages and the First Amended Complaint For Damages in the Underlying Lawsuit are attached as Exhibits "A" and "B", respectively.

5.

Formula was served with the Summons and Complaint for Damages through its registered agent, BFI, on October 4, 2018. A copy of the Affidavit of Service, which was filed in the Underlying Lawsuit on October 9, 2018, is attached as Exhibit "C".

6.

According to the Affidavit of Service, the process server personally served Linda Banks of BFI with the Summons and Complaint.

7.

On October 5, 2018, BFI sent an email to Formula informing it of the filing of the Underlying Lawsuit. (See attached document produced by BFI, bates labeled "BFI\_000001-8 attached hereto as Exhibit "D").

8.

On October 9, 2018, BFI noted that its email of October 10, 2018 had been rejected because the destination mailbox was full.

9.

Also on October 9, 2018, BFI's notes indicated that it made a courtesy call to Formula regarding the service of process.

10.

Formula has no record of any such call.

11.

Also on October 9, 2018, BFI's notes indicate that it sent another email to Formula regarding the service of process.

12.

On October 11, 2018, BFI's notes indicate that it sent another email to Formula regarding the service of process.

13.

On October 18, 2018, BFI's notes indicate that it sent a non-acknowledgment letter to Formula with log event number of 534173414. No further information from BFI regarding this service of process was provided.

14.

Formula did not receive any of the emails or the October 18, 2018 letter allegedly sent by BFI.

15.

On June 23, 2021, the court in the Underlying Lawsuit entered a Final Judgment in favor of Natalie Appelt for \$10 million against Formula Construction. A copy of the Final Judgment is attached as Exhibit "E".

16.

Formula Construction filed a Notice of Appeal of the Final Judgment on December 8, 2021. A copy of the Notice of Appeal is attached as Exhibit "F".



17.

The Georgia Court of Appeals entered its opinion and dismissed the appeal because the orders being appealed were not “final orders”. A copy of the Opinion/dismissal by the Court of Appeals is attached as Exhibit “G”.

**FIRST COMPLAINT AGAINST BFI**

18.

On September 13, 2022, Plaintiff filed a complaint against BFI in the State Court of Gwinnett County, styled: *Formula Construction Group, LLC v. Business Filings Incorporated*; Case No. 22-C-05164-S2.

19.

On October 14, 2023, the Parties entered into a Tolling Agreement where they agreed to dismiss the current action pending the outcome of the appeal of the Underlying Case. A copy of the Tolling Agreement is attached as Exhibit “H”.

20.

The case was dismissed without prejudice on October 14, 2022. A copy of the Voluntary Dismissal Without Prejudice is attached as Exhibit “I”.

21.

Per the dismissal without prejudice, each party has paid its own costs of litigation and there are no outstanding court costs due in the former case against BFI (Case No. 22-C-05164-S2).

22.

The Tolling Agreement allowed Formula to refile its case against BFI no later than forty-five (45) days after the ruling on the Appeal by the Georgia Court of Appeals or any final decision on any subsequent appeal to the Supreme Court of Georgia.



23.

As of the date of this filing, the Underlying Case has not been resubmitted to the Court of Appeals.

**COUNT I- BREACH OF CONTRACT**

24.

Paragraphs 1 through 22 are incorporated as if fully restated herein.

25.

Formula had a contract with BFI to act as Plaintiff's registered agent and to accept any service of process and properly notify Formula when lawsuits were served.

26.

BFI accepted service of the Underlying Lawsuit but it never actually notified Formula that it had done so.

27.

BFI's failure to notify Formula was a breach of its contract with Formula.

28.

Formula has been harmed by BFI's actions in an amount to be determined by a jury.

**COUNT II- NEGLIGENCE**

29.

Paragraphs 1 through 27 are incorporated as if fully restated herein.

30.

BFI had a duty to notify Formula when it was served with a lawsuit against Formula because it was Formula's registered agent.

31.

BFI failed to notify Formula that it had accepted service in the Underlying Lawsuit.

32.

BFI's failure and breach of its duty cased Formula to go into default in the Underlying Lawsuit.

33.

Formula was harmed by Defendant's actions in an amount to be determined by a jury.

**COUNT III- ATTORNEY'S FEES**

34.

Paragraphs 1 through 33 are incorporated as if fully restated herein.

35.

BFI's failure to notify Formula has caused Formula harm above and beyond the Default Judgment in the Underlying Lawsuit.

36.

BFI has been stubbornly litigious, acted in bad faith, and caused Formula unnecessary trouble and expense.

37.

Pursuant to O.C.G.A. § 13-6-11, Formula can recover its attorney's fees in this action because of BFI's conduct.

38.

Plaintiff has been harmed by Defendant's actions in an amount to be determined by a jury.

WHEREFORE, Plaintiff respectfully requests that this Court:

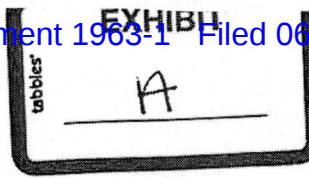
- (a) Enter judgment in its favor and against Defendant on all claims asserted herein;
- (b) Award Plaintiff all damages incurred as a result of Defendant's actions;
- (c) Award Plaintiff costs and attorneys' fees for prosecuting this action;
- (d) Award Plaintiff pre-judgment interest on all damages incurred;
- (e) Panel a jury to try all the issues in this case; and
- (f) Grant Plaintiff such other and further relief as is necessary.

Respectfully submitted this 16<sup>th</sup> day of May, 2023.

LINDSEY & LACY, PC

/s/ W. Thomas Lacy, Jr.  
W. Thomas Lacy, Jr.  
Georgia Bar No. 431032  
Alexandre A. Kachin  
Georgia Bar No. 130559

200 Westpark Drive, Suite 280  
Peachtree City, Georgia 30269  
Phone: (770) 486-8445  
Fax: (770) 486-8889  
[tlacy@llptc.com](mailto:tlacy@llptc.com)  
Attorney for Plaintiff



IN THE STATE COURT OF FULTON COUNTY  
STATE OF GEORGIA

MICHAEL APPELT and  
NATALIE APPELT,

Plaintiffs

Vs.

COLUMNS AT BENTLEY MANOR;  
COBB-BENTLEY ASSOCIATES, LTD (a  
domestic limited partnership);  
ECI GROUP, INC. (a domestic corporation);  
and FORMULA CONSTRUCTION GROUP,  
LLC (a domestic company),

Defendants

CIVIL ACTION NO:

JURY TRIAL REQUESTED

**COMPLAINT FOR DAMAGES**

COME NOW, Plaintiffs Michael Appelt and Natalie Appelt, and by and through the undersigned attorney, file this Complaint For Damages against Defendants Columns at Bentley Manor, Cobb-Bentley Associates, Ltd, ECI Group, Inc., and Formula Construction Group, Inc. (collectively, "Defendants") and show the following:

**JURISDICTION AND VENUE**

1.

Plaintiffs Michael and Natalie Appelt reside in Watkinsville, Georgia.

2.

Defendant Columns at Bentley Manor is an apartment complex located at 2600 Bentley Rd SE, Marietta, GA 30067, and service of process may be perfected upon the managing agent at the leasing office at this location, its registered agent, and/or otherwise as allowed by Georgia Law.

3.

Defendant Cobb-Bentley Associates, Ltd. is a domestic limited partnership located at 2100 Powers Ferry Road, Suite 200, Atlanta, GA 30339, and service of process may be perfected upon its registered agent, A.J. Block, Jr. located at 2060 Mt. Paran Road, #106, Atlanta, GA 30327, and/or otherwise as allowed by Georgia Law.

4.

Defendant ECI Group, Inc. is a domestic corporation, which is also located at 2100 Powers Ferry Road, Suite 200, Atlanta, GA 30339, and service of process may be perfected upon its registered agent, A.J. Block, Jr. located at 2060 Mt. Paran Road, #106, Atlanta, GA 30327, and/or otherwise as allowed by Georgia Law.

5.

Defendant Formula Construction Group, LLC is a domestic company located at 515 E. Crossville Road, Suite 350, Roswell, GA 30075, and service of process may be perfected upon its registered agent, Business Filings Incorporated located at 289 S Culver St, Lawrenceville, GA, 30046, and/or otherwise as provided by Georgia Law.

6.

Jurisdiction and Venue are proper in Fulton County Georgia. This Court has jurisdiction over all Defendants.

#### FACTS

7.

Defendant Columns at Bentley Manor is a residential apartment complex, and Defendant ECI Group, Inc. is the managing company for said apartment complex.

8.

Defendant Cobb-Bentley Associates, Ltd. is believed to be the parent company of ECI Group, Inc., or otherwise maintains authority, supervision, management and/or control over ECI Group, Inc. and/or Columns at Bentley Manor.



9.

Upon information and belief, Defendant Formula Construction Group, LLC was hired by Defendants Columns at Bentley Manor, ECI Group, Inc., and Cobb-Bentley Associates, Ltd. to remodel the attic at issue in this case.

10.

At the time of the incident, Plaintiff Michael Appelt was working as a fuel technician for Yes Energy Management. On October 7, 2016, Michael Appelt was invited to Columns at Bentley Manor (the "Property") by Defendants to perform maintenance and repairs on the Property.

11.

The services and work requested by Defendants required Mr. Appelt to enter into an attic on the Property. The attic was over-packed with personal property of the Defendants, and its visibility was poor.

12.

While in the attic, Mr. Appelt took all necessary precautions. Plaintiff was neither negligent nor contributorily negligent in any way.

13.

While performing his work, Mr. Appelt was required to stand on the attic's floor and/or support beams. While performing his work in the attic, Mr. Appelt stepped on the attic's floor and/or support beam. The floor and/or beam made a cracking sound, thereafter collapsing and causing Mr. Appelt to fall on the concrete floor below.

14.

Mr. Appelt was injured on the Property as a direct and proximate result of this fall.

15.

As a direct and proximate result of the negligence, gross negligence, and/or other facts and causes of actions set forth herein, Mr. Applet was injured on Defendants property.

Defendants' negligence includes, but is not limited to:

- (a) Over-packing the attic and support beams with more weight than they were constructed to withstand; and,
- (b) Failing to warn Plaintiff that the attic and support beams had been:
  - 1. negligently constructed; and,
  - 2. built without a permit; and,
  - 3. built by individuals or companies that were not licensed or otherwise allowed by Georgia law to legally perform the work; and,
  - 4. built by individuals or companies that were not qualified, competent, and/or properly trained or educated to safely and correctly perform the work; and,
- (c) Failing to comply with mandatory State, County, City, and/or other local building, property maintenance, construction, and/or renovation codes and guidelines (negligence per se); and,
- (d) Failing to adequately inspect and keep the premise and the attic safe for invitees like Plaintiff; and,
- (e) Failing to comply with industry standards in building, constructing, remodeling, renovating, and/or maintaining safe buildings, attics, and crawl spaces like the one in which Plaintiff was injured.

CAUSES OF ACTION

Count 1: Negligence & Negligence *Per Se*

16.

Paragraphs 1 through and including 15 are incorporated into Count 1 as if recited verbatim.

17.

Defendants Cobb-Bentley, Bentley Manor and ECI Group, Inc., as owners of the premises, had a statutory duty of care to keep their premises safe for invitees like Plaintiff.

18.

Defendants Cobb-Bentley, Bentley Manor and ECI Group, Inc. breached that duty of care by failing to adequately inspect and maintain the attic space above the fitness center for hazards and perils.

19.

Defendants Cobb-Bentley, Bentley Manor and ECI Group, Inc. had a statutory duty to seek building permits to remodel their property.

20.

Defendants Cobb-Bentley, Bentley Manor and ECI Group, Inc.'s breached their duty of care by failing to obtain building permits and otherwise abide by state law and local ordinances.

21.

Defendants Cobb-Bentley, Bentley Manor and ECI Group, Inc. knew and should have known that a failure to abide by required building codes and industry standards could result in injury to persons.

22.

Defendants Cobb-Bentley, Bentley Manor and ECI Group, Inc.'s knew and should have known that a failure to inspect and maintain their premises could result in injury to persons.

23.

Defendants Cobb-Bentley, Bentley Manor and ECI Group, Inc.'s failure to exercise due care in inspection and maintenance of the premises and failure to obtain building permits directly and proximately caused damages to Mr. Appelt, who fell through the attic flooring and onto concrete.

24.

Defendant Formula Construction Group, LLC failed to exercise due care when it remodeled the Property.

25.

As a result of Defendants' breach of duties, Mr. Appelt was rushed to the emergency room, where he suffered from a broken ankle which required surgery. Mr. Appelt also requires surgery on his lower-back (L3-L5 fusion).

26.

As a result of Defendants' breach of duties, Mr. Appelt has incurred great pain and suffering, loss of enjoyment of life, and loss of income.

**Count 2: Gross Negligence; Reckless Disregard**

27.

Paragraphs 1 through and including 26 are incorporated into Count 2 as if recited verbatim.

28.

The combined negligence of all Defendants rises to the level of Gross Negligence.

29.

Defendants had reckless disregard for the safety of invitees, particularly with respect to the construction, storage, and maintenance of the attic/roof/and/or beam which caused Plaintiff's fall, and failed to exercise even slight diligence.

30.

Defendants actually knew, and should have known, that their negligence, as more specifically set forth in paragraphs 7 through and including 26, would create a dangerous hazard that could cause serious injuries, like those suffered by Plaintiff.

31.

Defendants acted with the absence of even slight diligence, and are therefore liable for Gross negligence.

**Count 3: Loss of Consortium**

32.

Paragraphs 1 through and including 31 are incorporated into Count 3 as if recited verbatim.

33.

Plaintiff Natalie Appelt suffered a loss of consortium because of Defendant's actions which led to her husband's injuries.

34.

Mrs. Appelt suffered a loss of affection, loss of care, loss of joint income, and loss of services of her husband as a direct result of these injuries.

**Count 4: Damages**

35.

Paragraphs 1 through and including 34 are incorporated into Count 4 as if recited verbatim.

36.

Defendants are liable to Plaintiffs for general, special and compensatory damages arising out of Defendants' negligence, the exact types and amounts of which shall be proven at trial. Presently, Plaintiffs' claims include damages for:

1. Past, Present and Future Medical Bills;
2. Past, Present, and Future Pain and Suffering (Physical and Mental);
3. Lost Wages and Diminished Earning Capacity;



4. Loss of Consortium; and,
5. Any other damages types, categories, and/or amounts the exact nature and amount of which will be proven at trial.

**Count 5: Punitive Damages**

37.

Paragraphs 1 through and including 36 are incorporated into Count 5 as if recited verbatim.

38.

Defendants' failure to exercise the slightest care in building, maintaining, and inspecting their premises proximately caused damages to Plaintiffs, and therefore Defendants should be punished for their gross lack of due care.

39.

As a result, Defendants are liable for punitive damages in an amount determined by the trier of fact.

**Count 6: Joint and Several Liability**

40.

Paragraphs 1 through and including 39 are incorporated into count 6 as if recited verbatim.

41.

All Defendants are jointly and severally liable for Plaintiffs' injuries and damages.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby exercise their constitutional right to demand a trial by a jury of twelve.

WHEREFORE, Plaintiff's pray for a judgment from a jury of 12 and as follows:

- a) That Plaintiffs have judgment for general, special, compensatory, and punitive damages against Defendant, including but not limited to:
  - i. Past, Present and Future Medical Bills;
  - ii. Past, Present, and Future Pain and Suffering (Physical and Mental);
  - iii. Lost Wages and Diminished Earning Capacity;
  - iv. Loss of Consortium; and,
  - v. Any other damages types, categories, and/or amounts the exact nature and amount of which will be proven at trial; and,
- b) That Plaintiffs have their costs, expenses, and attorney's fees from Defendant; and,
- c) Punitive Damages; and
- d) Defendants be held jointly and severally liable for Plaintiffs' injuries and damages; and,
- e) That Plaintiffs have such other and further relief as the Court deems just or proper.

Respectfully submitted, this 3<sup>rd</sup> day of October, 2018.

**TRIVEDI LAW FIRM, LLC**

s/ Ankur P. Trivedi

Ankur P. Trivedi

Attorney for Plaintiffs

GA Bar #: 859811

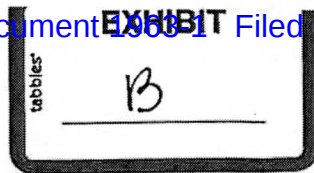
279 W. Crogan St., Ste. E

Lawrenceville, GA 30046

O: (678) 723-4447

F: (404) 907-1275

E: atrivedi@ATLegalFirm.com

IN THE STATE COURT OF FULTON COUNTY  
STATE OF GEORGIAMICHAEL APPELT and  
NATALIE APPELT,

Plaintiffs

Vs.

COLUMNS AT BENTLEY MANOR;  
COBB-BENTLEY ASSOCIATES, LTD (a  
domestic limited partnership);  
ECI MANAGEMENT, LLC. (a domestic  
company); and FORMULA CONSTRUCTION  
GROUP, LLC (a domestic company),

Defendants

CIVIL ACTION

FILE NO: 18EV004800FIRST AMENDED COMPLAINT FOR DAMAGES

COME NOW, Plaintiffs Michael Appelt and Natalie Appelt in the above-styled case by and through their Attorney of record, and, by authority of this Court's Order dated December 10, 2018, hereby amend their *Complaint For Damages*. This complaint supersedes and replaces, though relates-back to, the original complaint filed October 03, 2018.

Plaintiffs now file this *First Amended Complaint For Damages* against Defendants Columns at Bentley Manor, Cobb-Bentley Associates, Ltd, ECI Management, LLC (replacing ECI Group, Inc.), and Formula Construction Group, Inc. (collectively, "Defendants") and show the following:

JURISDICTION AND VENUE

1.

Plaintiffs Michael and Natalie Appelt reside in Watkinsville, Georgia.

2.

Defendant Columns at Bentley Manor is an apartment complex located at 2600 Bentley Rd SE, Marietta, GA 30067, and service of process may be perfected upon the managing agent at the leasing office at this location, its registered agent, and/or otherwise as allowed by Georgia Law.

3.

Defendant Cobb-Bentley Associates, Ltd. is a domestic limited partnership located at 2100 Powers Ferry Road, Suite 200, Atlanta, GA 30339, and service of process may be perfected upon its registered agent, A.J. Block, Jr. located at 2060 Mt. Paran Road, #106, Atlanta, GA 30327, and/or otherwise as allowed by Georgia Law.

4.

Defendant ECI Management, LLC. is a domestic company, which is also located at 2100 Powers Ferry Road, Suite 200, Atlanta, GA 30339, and service of process may be perfected upon its registered agent, A.J. Block, Jr. located at 2060 Mt. Paran Road, #106, Atlanta, GA 30327, and/or otherwise as allowed by Georgia Law.

5.

Defendant Formula Construction Group, LLC is a domestic company located at 515 E. Crossville Road, Suite 350, Roswell, GA 30075, and service of process may be perfected upon its registered agent, Business Filings Incorporated located at 289 S Culver St, Lawrenceville, GA, 30046, and/or otherwise as provided by Georgia Law.

6.

Jurisdiction and Venue are proper in Fulton County Georgia. This Court has jurisdiction over all Defendants.

#### FACTS

7.

Defendant Columns at Bentley Manor is a residential apartment complex, and Defendant ECI Management, LLC is the managing company for said apartment complex.

8.

Defendant Cobb-Bentley Associates, Ltd. is believed to be the parent company of ECI Management, LLC, or otherwise maintains authority, supervision, management and/or control over ECI Management, LLC and/or Columns at Bentley Manor.

9.

Upon information and belief, Defendant Formula Construction Group, LLC was hired by Defendants Columns at Bentley Manor, ECI Management, LLC, and Cobb-Bentley Associates, Ltd. to remodel the attic at issue in this case.

10.

At the time of the incident, Plaintiff Michael Appelt was working as a **field** technician for Yes Energy Management. On October 7, 2016, Michael Appelt was invited to Columns at Bentley Manor (the "Property") by Defendants to perform maintenance and repairs on the Property.

11.

The services and work requested by Defendants required Mr. Appelt to enter into an attic on the Property. The attic was over-packed with personal property of the Defendants, and its visibility was poor.

12.

While in the attic, Mr. Appelt took all necessary precautions. Plaintiff was neither negligent nor contributorily negligent in any way.

13.

While performing his work, Mr. Appelt was required to stand on the attic's floor and/or support beams. While performing his work in the attic, Mr. Appelt stepped on the attic's floor and/or support beam. The floor and/or beam made a cracking sound, thereafter collapsing and causing Mr. Appelt to fall on the concrete floor below.

14.

Mr. Appelt was injured on the Property as a direct and proximate result of this fall.



15.

As a direct and proximate result of the negligence, gross negligence, and/or other facts and causes of actions set forth herein, Mr. Applet was injured on Defendants property.

Defendants' negligence includes, but is not limited to:

- (a) Over-packing the attic and support beams with more weight than they were constructed to withstand; and,
- (b) Failing to warn Plaintiff that the attic and support beams had been:
  - 1. negligently constructed; and,
  - 2. built without a permit; and,
  - 3. built by individuals or companies that were not licensed or otherwise allowed by Georgia law to legally perform the work; and,
  - 4. built by individuals or companies that were not qualified, competent, and/or properly trained or educated to safely and correctly perform the work; and,
- (c) Failing to comply with mandatory State, County, City, and/or other local building, property maintenance, construction, and/or renovation codes and guidelines (negligence per se); and,
- (d) Failing to adequately inspect and keep the premise and the attic safe for invitees like Plaintiff; and,
- (e) Failing to comply with industry standards in building, constructing, remodeling, renovating, and/or maintaining safe buildings, attics, and crawl spaces like the one in which Plaintiff was injured.

CAUSES OF ACTION

**Count 1: Negligence & Negligence *Per Se***

16.

Paragraphs 1 through and including 15 are incorporated into Count 1 as if recited verbatim.

17.

Defendants Cobb-Bentley, Bentley Manor, and ECI Management, LLC, as owners of the premises, had a statutory duty of care to keep their premises safe for invitees like Plaintiff.

18.

Defendants Cobb-Bentley, Bentley Manor, and ECI Management, LLC breached that duty of care by failing to adequately inspect and maintain the attic space above the fitness center for hazards and perils.

19.

Defendants Cobb-Bentley, Bentley Manor, and ECI Management, LLC had a statutory duty to seek building permits to remodel their property.

20.

Defendants Cobb-Bentley, Bentley Manor, and ECI Management, LLC breached their duty of care by failing to obtain building permits and otherwise abide by state law and local ordinances.

21.

Defendants Cobb-Bentley, Bentley Manor, and ECI Management, LLC knew and should have known that a failure to abide by required building codes and industry standards could result in injury to persons.

22.

Defendants Cobb-Bentley, Bentley Manor, and ECI Management, LLC knew and should have known that a failure to inspect and maintain their premises could result in injury to persons.

23.

Defendants Cobb-Bentley, Bentley Manor, and ECI Management, LLC's failure to exercise due care in inspection and maintenance of the premises and failure to obtain building permits directly and proximately caused damages to Mr. Appelt, who fell through the attic flooring and onto concrete.

24.

Defendant Formula Construction Group, LLC failed to exercise due care when it remodeled the Property.

25.

As a result of Defendants' breach of duties, Mr. Appelt was rushed to the emergency room, where he suffered from a broken ankle which required surgery. Mr. Appelt also requires surgery on his lower-back (L3-L5 fusion).

26.

As a result of Defendants' breach of duties, Mr. Appelt has incurred great pain and suffering, loss of enjoyment of life, and loss of income.

**Count 2: Gross Negligence; Reckless Disregard**

27.

Paragraphs 1 through and including 26 are incorporated into Count 2 as if recited verbatim.

28.

The combined negligence of all Defendants rises to the level of Gross Negligence.

29.

Defendants had reckless disregard for the safety of invitees, particularly with respect to the construction, storage, and maintenance of the attic/roof/and/or beam which caused Plaintiff's fall, and failed to exercise even slight diligence.

30.

Defendants actually knew, and should have known, that their negligence, as more specifically set forth in paragraphs 7 through and including 26, would create a dangerous hazard that could cause serious injuries, like those suffered by Plaintiff.

31.

Defendants acted with the absence of even slight diligence, and are therefore liable for Gross negligence.

**Count 3: Loss of Consortium**

32.

Paragraphs 1 through and including 31 are incorporated into Count 3 as if recited verbatim.

33.

Plaintiff Natalie Appelt suffered a loss of consortium because of Defendant's actions which led to her husband's injuries.

34.

Mrs. Appelt suffered a loss of affection, loss of care, loss of joint income, and loss of services of her husband as a direct result of these injuries.

**Count 4: Damages**

35.

Paragraphs 1 through and including 34 are incorporated into Count 4 as if recited verbatim.

36.

Defendants are liable to Plaintiffs for general, special and compensatory damages arising out of Defendants' negligence, the exact types and amounts of which shall be proven at trial. Presently, Plaintiffs' claims include damages for:

1. Past, Present and Future Medical Bills;
2. Past, Present, and Future Pain and Suffering (Physical and Mental);
3. Lost Wages and Diminished Earning Capacity;
4. Loss of Consortium; and,
5. Any other damages types, categories, and/or amounts the exact nature and amount of which will be proven at trial.

**Count 5: Punitive Damages**

37.

Paragraphs 1 through and including 36 are incorporated into Count 5 as if recited verbatim.

38.

Defendants' failure to exercise the slightest care in building, maintaining, and inspecting their premises proximately caused damages to Plaintiffs, and therefore Defendants should be punished for their gross lack of due care.

39.

As a result, Defendants are liable for punitive damages in an amount determined by the trier of fact.

**Count 6: Joint and Several Liability**

40.

Paragraphs 1 through and including 39 are incorporated into count 6 as if recited verbatim.

41.

All Defendants are jointly and severally liable for Plaintiffs' injuries and damages.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby exercise their constitutional right to demand a trial by a jury of twelve.

WHEREFORE, Plaintiff's pray for a judgment from a jury of 12 and as follows:

- a) That Plaintiffs have judgment for general, special, compensatory, and punitive damages against Defendant, including but not limited to:
  - i. Past, Present and Future Medical Bills;
  - ii. Past, Present, and Future Pain and Suffering (Physical and Mental);
  - iii. Lost Wages and Diminished Earning Capacity;



- iv. Loss of Consortium; and,
- v. Any other damages types, categories, and/or amounts the exact nature and amount of which will be proven at trial; and,
- b) That Plaintiffs have their costs, expenses, and attorney's fees from Defendant; and,
- c) Punitive Damages; and
- d) Defendants be held jointly and severally liable for Plaintiffs' injuries and damages; and,
- e) That Plaintiffs have such other and further relief as the Court deems just or proper.

Respectfully submitted, this 10<sup>th</sup> day of December, 2018.

**TRIVEDI LAW FIRM, LLC**

/s/ Ankur P. Trivedi  
Ankur P. Trivedi  
Attorney for Plaintiffs  
GA Bar #: 859811

279 W. Crogan St., Ste. E  
Lawrenceville, GA 30046  
o: 678-723-4447  
f: 404-907-1275  
e: atrivedi@ATLegalFirm.com

IN THE STATE COURT OF FULTON COUNTY  
STATE OF GEORGIA

MICHAEL APPELT and NATALIE APPELT,

Plaintiffs

Vs.

COLUMNS AT BENTLEY MANOR;  
COBB-BENTLEY ASSOCIATES, LTD (a  
domestic limited partnership);  
ECI MANAGEMENT, LLC. (a domestic  
company); and FORMULA CONSTRUCTION  
GROUP, LLC (a domestic company),

Defendants

CIVIL ACTION

FILE NO: 18EV004800

**CERTIFICATE OF SERVICE**

I, the undersigned Attorney for Plaintiffs declare that I have on the below date served a true and correct copy of Plaintiffs' *First Amended Complaint for Damages* upon the following parties by statutory electronic service or USPS First-Class mail, with sufficient postage affixed thereto, as indicated below.

Cobb-Bentley Associates, Ltd. and  
ECI Management, LLC  
c/o Jeffery Randolph Saxby, Esq.  
Hall Booth Smith, P.C.  
191 Peachtree Street NE, Suite 2900  
Atlanta, Georgia 30303  
VIA eService: [jsaxby@hallboothsmith.com](mailto:jsaxby@hallboothsmith.com)

Formula Construction Company, Inc.  
515 E. Crossville Road, Suite 350  
Roswell, GA 30075

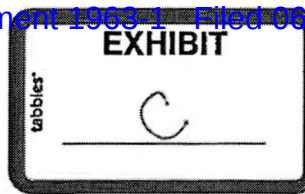
**VIA USPS First-Class Mail**

This 10<sup>th</sup> day of December, 2018.

**TRIVEDI LAW FIRM, LLC**

279 W. Crogan St., Ste. E  
Lawrenceville, GA 30046  
o: 678-723-4447  
f: 404-907-1275  
e: [atrivedi@ATLegalFirm.com](mailto:atrivedi@ATLegalFirm.com)

/s/ Ankur P. Trivedi  
Ankur P. Trivedi  
Attorney for Plaintiffs  
GA Bar #: 859811



State of Fulton County  
 \*\*E-FILED\*\*  
 18EV004800  
 10/9/2018 11:30 AM  
 LeNora Ponzio, Clerk  
 Civil Division

IN THE STATE COURT OF FULTON COUNTY, STATE OF GEORGIA

MICHAEL APPELT AND NATALIE APPELT

Plaintiff(s),

Case No.: 18EV004800

vs.

AFFIDAVIT OF SERVICE

COLUMNS AT BENTLEY MANOR; COBB-BENTLEY  
 ASSOCIATES, LTD; ECI GROUP, INC; FORMULA  
 CONSTRUCTION GROUP, LLC

Defendant(s).

Personally appeared before me, the undersigned officer duly authorized to administer oaths, Jeroy Robinson, who, first being duly sworn, on oath deposes and states that he/she is a citizen of the United States and is 18 years of age or older and is a party having no interest in the above-styled case. Affiant further states that on October 04, 2018 at 1:50 PM, I served Formula Construction Group LLC by personally serving LINDA BANKS, Process Specialist, located at 289 South Culver Street, Lawrenceville, GA 30046 with the following: Summons & Complaint for Damages.

Description of person process was left with:

Sex: Female - Skin: Caucasian - Hair: White - Age: 65 - Height: 5ft7in - Weight: 120

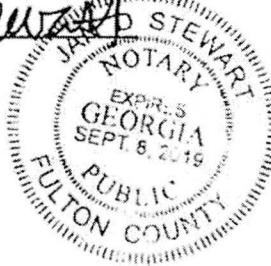
I declare under penalty of perjury that the foregoing is true and correct.

Executed on 10-5-18

Signed and sworn to before me on  
 this 5th day of October, 2018  
 by an affiant who is personally known to me  
 or produced identification.

Notary Public

*[Signature of Jane Stewart]*

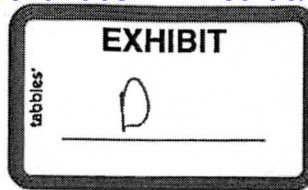


Trivedi Law Firm LLC

*[Signature of Jeroy Robinson]*  
 Jeroy Robinson  
 MLQ Attorney Services  
 2000 Riveredge Parkway, Suite 885  
 Atlanta, GA 30328  
 770-984-7007/800-446-8794



\*642401\*



STATE OF Wisconsin )

COUNTY OF Dane )

**AFFIDAVIT**


Before me, the undersigned officer, duly authorized to administer oaths, appeared

Mike Enright, who upon being duly sworn, states:

1. That he/she is the records custodian for Business Filings Incorporated and that any and all copies of records attached hereto are true and correct copies of the records kept in the normal course of business;
2. The records were made by a person with personal knowledge and a business duty to report or were prepared from information transmitted by a person with personal knowledge and a business duty to report; and
3. The records were made at or near the time of the acts, events, conditions and/or incidents which they purport to represent.

☐ The materials requested DO NOT exist.

DATED, this 28th day of July, 2022.

  
\_\_\_\_\_  
Records Custodian

Sworn to and subscribed and before me  
This 28 day of July 2022.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 7/16/2023



BFI\_000001



Edit Notes - Formula Construction Group, LLC - Work - Microsoft Edge

Not secure | iflow.bizfilings.com/iflow/Pages/Common/EditNotes.aspx?src=RA&ordersID=3562600&RACompanyStateID=1047801&BFIUID...

### Edit Notes

Search:

Date	Subject	Name	State
10-11-2018 09:52:10	Re-sent SOP Acknowledgement Email	KB	GA
10-09-2018 09:52:49	Re-sent Email from SOP Followup Screen	KB	GA
10-09-2018 09:52:45	RA SOP Courtesy Call	KB	GA
10-05-2018 09:07:39	Emailed RE: SOP	Andria	GA
06-12-2017 17:06:54	Audit	BIZ	GA

New Select State Delete

Subject:

☐ Alert

-or-  ☐ Flag

Emailed RE: SOP

Dear Ross Haynes,

BizFilings serves as the registered agent for your company in the state of Georgia.

BizFilings received a service of process document on behalf of your company. Below is a summary of the information

Show Edit Log

Save

Edit Notes - Formula Construction Group, LLC - Work - Microsoft Edge

Not secure | iflow.bizfilings.com/iflow/Pages/Common/EditNotes.aspx?src=RA&ordersID=3562600&RACompanyStateID=1047801&BFIUID...

### Edit Notes

Search:

Date	Subject	Name	State
10-11-2018 09:52:10	Re-sent SOP Acknowledgement Email	KB	GA
10-09-2018 09:52:49	Re-sent Email from SOP Followup Screen	KB	GA
10-09-2018 09:52:45	RA SOP Courtesy Call	KB	GA
10-05-2018 09:07:39	Emailed RE: SOP	Andria	GA
06-12-2017 17:06:54	Audit	BIZ	GA

New Select State Delete

Subject: RA SOP Courtesy Call

☐ Alert

-or-  ☐ Flag

Mailbox full. Re-emailed SOP

Show Edit Log

Save

BFI\_000002



Edit Notes - Formula Construction Group, LLC - Work - Microsoft Edge

Not secure | iflow.bizfilings.com/iframe/Pages/Common/EditNotes.aspx?src=RA&ordersID=3562600&RACompanyStateID=1047801&BFIUID=...

### Edit Notes

Search:

Date	Subject	Name	State
10-11-2018 09:52:10	Re-sent SOP Acknowledgement Email	KB	GA
10-09-2018 09:52:45	RA SOP Courtesy Call	KB	GA
10-05-2018 09:07:39	Emailed RE: SOP	Andria	GA
06-12-2017 17:06:54	Audit	BIZ	GA

New Select State Delete

Subject:  ☐ Alert

-or- :  ☐ Flag

Re-sent Email from SOP Folks

Dear Ross Haynes,

BizFilings serves as the registered agent for your company in the state of Georgia.

BizFilings received a service of process document on behalf of your company. Below is a summary of the information.

Show Edit Log

Save

Edit Notes - Formula Construction Group, LLC - Work - Microsoft Edge

Not secure | iflow.bizfilings.com/iframe/Pages/Common/EditNotes.aspx?src=RA&ordersID=3562600&RACompanyStateID=1047801&BFIUID=...

### Edit Notes

Search:

Date	Subject	Name	State
07-30-2019 08:33:09	Emailed RE: SOP	BREN	GA
10-18-2018 11:11:15	Service of Process	BREN	GA
10-11-2018 09:52:10	Re-sent SOP Acknowledgement Email	KB	GA
10-09-2018 09:52:49	Re-sent Email from SOP Followup Screen	KB	GA
10-09-2018 09:52:45	RA SOP Courtesy Call	KB	GA

New Select State Delete

Subject:  ☐ Alert

-or- :  ☐ Flag

Re-sent SOP Acknowledgement

Dear Ross Haynes,

It is our pleasure to serve as your registered agent. We recently emailed you a Service of Process and a request to acknowledge receipt for the following:

- Formula Construction Group, LLC
- In the State of Georgia

Show Edit Log

Save

BFI\_000003

Edit Notes - Formula Construction Group, LLC - Work - Microsoft Edge

Not secure | iflow.bizfilings.com/iflow/Pages/Common/EditNotes.aspx?src=RA&orderID=3562600&RACompanyStateID=1047801&BFIUID...

### Edit Notes

Search:

Date	Subject	Name	State
07-30-2019 08:33:09	Emailed RE: SOP	BREN	GA
10-18-2018 11:11:15	Service of Process	BREN	GA
10-11-2018 09:52:10	Re-sent SOP Acknowledgement Email	KB	GA
10-09-2018 09:52:49	Re-sent Email from SOP Followup Screen	KB	GA
10-09-2018 09:52:45	RA SOP Courtesy Call	KB	GA

New Select State ▼ Delete

Subject: ▼ ☐ Alert

-or- : Service of Process ☐ Flag

Sent Non-Acknowledge Letter, Log # 534173414 , Date SOP Sent: 10/5/2018

Show Edit Log

Save

BFI\_000004

---

**From:** BFI-RegisteredAgent  
**Sent:** Friday, October 5, 2018 10:08 AM  
**To:** ross.haynes@formulaconstruction.com  
**Subject:** Urgent! BizFilings received Process in Georgia for Formula Construction Group, LLC



[Home](#)  
[Account](#)  
[Customer Service](#)

Questions? Call 1-800-981-7183



---

## Service Of Process Notification

### Need help?

Contact us with any questions or concerns:

**Email:** [Agent@BizFilings.com](mailto:Agent@BizFilings.com)

**Phone:** M-F 8am-7pm CT  
1-800-981-7183

Dear Ross Haynes,

BizFilings serves as the registered agent for your company in the state of Georgia.

BizFilings received a service of process document on behalf of your company.

It is important for us to know that you have received delivery of your Service of Process.

Please log in to your online account by clicking on the link below and entering your user name and password.

If you do not know your user name and password you can use the forgot password [link](#), or you can contact our Registered Agent team at 800-981-7183 and then press 2.

[Please click here to view & to acknowledge receipt](#)

Our Registered Agent team will follow up with you by phone if we do not receive your acknowledgement.

Below is a summary of the information.

Title of Action: SOP Personal Injury - Failure to Maintain  
Premises in a Safe Condition - 10/07/2016  
Date Served: 10/4/2018  
Method of Service: Process Server  
Plaintiff's Attorney: Ankur P. Trivedi  
Attorney's Phone Number: (678) 723-4447  
Answer Date: Within 30 days after service, not counting the  
day of service.  
Special Notes: Log # 534173414

**Convenient access, secure storage:** View your documents from  
home, at work, or on the road. Download at your  
convenience.

All service of process documents we have ever received on  
your behalf are securely posted to the Forms Library section of  
your online account for you to download at your convenience.  
BizFilings will notify you by email when we receive a service of  
process document on your behalf and it is the customer's  
responsibility to keep a valid email on file with us to ensure  
you receive timely notice.

If you would like a hard copy of your service of process  
document, please contact our registered agent department  
within 48 hours at (800)-981-7183 or (608)-827-5300, Monday  
- Friday 8:00 AM - 7:00 PM central time. Shipping fees of  
\$16.95 will apply for each sent.

Committed to your business success,

The BizFilings Registered Agent Team

This email has been sent to the following:  
ross.haynes@formulaconstruction.com



Disclaimer: BizFilings is not a law firm and does not provide legal advice. If legal advice is required, please seek the services of an  
attorney. Read BizFilings' full terms of use at <http://www.BizFilings.com/service/terms-of-use.aspx>



---

**From:** BFI-RegisteredAgent  
**Sent:** Tuesday, October 9, 2018 10:53 AM  
**To:** ross.haynes@formulaconstruction.com  
**Subject:** BizFilings received Process in Georgia for Formula Construction Group, LLC



[Home](#)  
[Account](#)  
[Customer Service](#)

Questions? Call 1-800-981-7183



---

### Service Of Process Notification

#### Need help?

Contact us with any questions or concerns:

**Email:** [Agent@BizFilings.com](mailto:Agent@BizFilings.com)

**Phone:** M-F 8am-7pm CT  
1-800-981-7183

Dear Ross Haynes,

BizFilings serves as the registered agent for your company in the state of Georgia.

BizFilings received a service of process document on behalf of your company.

It is important for us to know that you have received delivery of your Service of Process.

Please log in to your online account by clicking on the link below and entering your user name and password.

If you do not know your user name and password you can use the forgot password [link](#), or you can contact our Registered Agent team at 800-981-7183 and then press 2.

[Please click here to view & to acknowledge receipt](#)

Our Registered Agent team will follow up with you by phone if we do not receive your acknowledgement.

Below is a summary of the information.



Title of Action: SOP Personal Injury - Failure to Maintain  
Premises in a Safe Condition - 10/07/2016  
Date Served: 10/4/2018  
Method of Service: Process Server  
Plaintiff's Attorney: Ankur P. Trivedi  
Attorney's Phone Number: (678) 723-4447  
Answer Date: Within 30 days after service, not counting the  
day of service.  
Special Notes: Log # 534173414

**Convenient access, secure storage:** View your documents from  
home, at work, or on the road. Download at your  
convenience.

All service of process documents we have ever received on  
your behalf are securely posted to the Forms Library section of  
your online account for you to download at your convenience.  
BizFilings will notify you by email when we receive a service of  
process document on your behalf and it is the customer's  
responsibility to keep a valid email on file with us to ensure  
you receive timely notice.

If you would like a hard copy of your service of process  
document, please contact our registered agent department  
within 48 hours at (800)-981-7183 or (608)-827-5300, Monday  
- Friday 8:00 AM - 7:00 PM central time. Shipping fees of  
\$16.95 will apply for each sent.

Committed to your business success,

The BizFilings Registered Agent Team

This email has been sent to the following:  
ross.haynes@formulaconstruction.com



Disclaimer: BizFilings is not a law firm and does not provide legal advice. If legal advice is required, please seek the services of an  
attorney. Read BizFilings' full terms of use at <http://www.BizFilings.com/service/terms-of-use.aspx>.

**From:** BFI-RegisteredAgent  
**Sent:** Thursday, October 11, 2018 10:52 AM  
**To:** ross.haynes@formulaconstruction.com  
**Subject:** BizFilings received Process in Georgia for Formula Construction Group, LLC



[Home](#)  
[Account](#)  
[Customer Service](#)

Questions? Call 1-800-981-7183



### Service Of Process Notification

#### Need help?

Contact us with any questions or concerns:

**Email:** [Agent@BizFilings.com](mailto:Agent@BizFilings.com)

**Phone:** M-F 8am-7pm CT  
1-800-981-7183

Dear Ross Haynes,

It is our pleasure to serve as your registered agent. We recently emailed you a Service of Process and a request to acknowledge receipt for the following:

- Formula Construction Group, LLC
- In the State of Georgia

#### Acknowledge Receipt: Service of Process Delivery

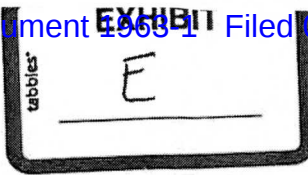
We are still waiting for receipt of your acknowledgment. As your registered agent, the confidential handling and delivery of your important legal, state and tax documents is our top priority. Please log in to your online account by clicking on the link below and entering your user name and password to view and acknowledge receipt of your Service of Process.

If you do not know your user name and password you can use the forgot password [link](#), or you can contact our Registered Agent team at 800-981-7183 and then press 2. Please click on the link below to acknowledge receipt of your Service of Process.

**Click [here](#) to view & to acknowledge SOP receipt**

Committed to your business success,

The BizFilings Registered Agent Team



State Court of Fulton County

\*\*\*EFILED\*\*\*

File & ServeXpress

Transaction ID: 66710799

Case Number: 18EV004800

Date: Jun 23 2021 03:45PM

Christopher G. Scott, Chief Clerk

Civil Division

IN THE STATE COURT OF FULTON COUNTY  
STATE OF GEORGIA

MICHAEL APPELT and  
NATALIE APPELT,

Plaintiffs

VS.

FORMULA CONSTRUCTION GROUP,  
LLC (a domestic company),

Defendants

CIVIL ACTION FILE NO.

18-EV-004800

FINAL JUDGMENT

The above-styled case came before the Honorable Court for Bench Trial on June 22, 2021 for unliquidated damages upon Formula Construction Group, LLC's ("Defendant") default. Before the Court are Plaintiffs' February 26, 2021 and June 18, 2021 motions for default judgment against the only remaining Defendant to this action, All other defendants were previously dismissed by order of this court. Consequently, this order shall operate as a final adjudication, order, and judgment on the merits of the case against the only remaining defendant and resolves all outstanding claims for all remaining parties.

At said trial, the Court heard testimony and received evidence about the physical injuries suffered by Michael Appelt as well as the mental and personality changes that followed after his injury that was the subject of this lawsuit. Upon consideration, it is hereby ORDERED that Plaintiff Natalie Appelt's motion for default judgment on her loss of consortium claim is hereby GRANTED and judgment in her favor in the amount of ten-million U.S. dollars (\$10,000,000.00) is hereby entered as a final order of this court

against defendant Formula Construction Group, LLC. It is further ORDERED that all of Michael Appelt's claims are hereby DISMISSED WITHOUT PREJUDICE, given the testimony presented that he died prior to the hearing and an estate had not been opened for Mr. Appelt as of the date of the June 22, 2021 hearing. See, Ashburn Bank v. Gorday, 377 S.E.2d 30; 189 Ga. App. 565 (2011).



---

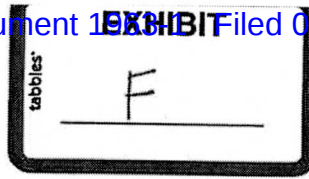
Hon. Fred C. Eady, Judge  
State Court of Fulton County  
State of Georgia

Prepared and Submitted by:

/s/ Justin Oliverio  
Justin Oliverio, Esq.  
Georgia Bar No. 368598  
Attorney for Plaintiff

The Millar Law Firm  
151 N. Main Street  
Jonesboro, Georgia 30236  
(770) 477-6360  
[Justin@AtlantaAdvocate.com](mailto:Justin@AtlantaAdvocate.com)





IN THE STATE COURT OF FULTON COUNTY  
 STATE OF GEORGIA

MICHAEL APPELT and NATALIE  
 APPELT,

Plaintiffs,

v.

FORMULA CONSTRUCTION GROUP,  
 LLC,

Defendant.

CIVIL ACTION FILE  
 NO.: 18-EV-004800

**NOTICE OF APPEAL**

Notice is hereby given that defendant Formula Construction Group, LLC (“Formula Construction”) hereby appeals to the Court of Appeals of Georgia from this Court’s Orders of November 10, 2021 denying Formula Construction’s *Motion to Set Aside the Final Judgment or, Alternatively, to Stay this Matter until a Transcript of the Damages Hearing is Finished* and Formula Construction’s *Motion to Dismiss or, Alternatively, to Open Default*. The Orders on appeal are final orders disposing of the action. The Order on the Motion to Dismiss, or, Alternatively, to Open Default, is directly appealable pursuant to O.C.G.A. § 5-6-34(a). Although the Order on the Motion to Set Aside the Final Judgment would ordinarily require application for discretionary appeal under O.C.G.A. § 5-6-35(a)(8), a party may appeal such an issue directly when it is raised with the appeal of a separate, directly appealable order. Under O.C.G.A. § 5-6-34(d), when a matter is properly directly appealed, “all judgments, rulings, or orders rendered in the case which are raised on appeal and may affect the proceedings below shall be reviewed and determined by the appellate court, without regard to the appealability of the judgment, ruling, or order standing alone.” *See Keogh v. Bryson*,



319 Ga. App. 294, 297 (2012) (permitting direct appeal of motion to set aside default judgment when brought with directly appealable grant of summary judgment for plaintiff/appellee); *Martin v. Williams*, 263 Ga. 707, 710 1994 (holding “the tension between § 5-6-34(d) and § 5-6-35 should be resolved by construing the phrase ‘following cases’ in § 5-6-35 to exclude those cases in which § 5-6-34(d) is applicable.”).

The Court of Appeals of Georgia, rather than the Supreme Court of Georgia, has jurisdiction of this case on appeal because this is not a case enumerated to the jurisdiction of the Supreme Court by Ga. Const. Art. 6, § 6, ¶ 3.

Formula Construction requests that all portions of the record in the above captioned case be transmitted to the Court of Appeals of Georgia and that the Clerk omit nothing from the record on appeal. In its *Motion to Set Aside the Final Judgment, or, Alternatively, to Stay this Matter until a Transcript of the Damages Hearing is Finished*, Formula Construction requested that this Court prepare a transcript of the damages hearing from recollection. That motion, now on appeal, was denied in its entirety, including the request for a transcript. The Court did not enter an order pursuant to O.C.G.A. § 5-6-41(g) stating it was unable to recall what transpired at the hearing.

Respectfully submitted this 8<sup>th</sup> day of December, 2021.

/s/ Andrew M. Capobianco  
Andrew M. Capobianco  
Georgia Bar No. 012592  
S. Bryn McDermott  
Georgia Bar No. 506028  
*Attorneys for Defendant Formula  
Construction Group, LLC*

MOZLEY, FINLAYSON & LOGGINS LLP  
1050 Crown Pointe Parkway, Suite 1500  
Atlanta, Georgia 30338

404.256.0700 (telephone)  
404.250.9355 (facsimile)  
acapobianco@mflaw.com  
bmcdermott@mflaw.com

**CERTIFICATE OF SERVICE**

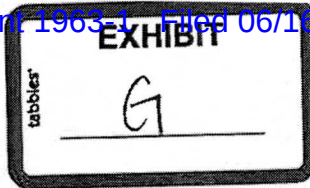
This is to certify that I have this date served the foregoing **Notice of Appeal** via the Court's electronic filing system, which will send notification to all counsel of record as follows:

Justin Oliverio  
The Millar Law Firm  
151 N. Main Street  
Jonesboro, GA 30236  
justin@atlantaadvocate.com  
*Attorney for Plaintiff*

William D. Flatt  
Flatt & Dale, P.C.  
5555 Glenridge Connector  
Suite 200  
Atlanta, GA 30342  
WDF@flattdale.com  
*Attorney for Formula Construction Group, LLC*

This 8<sup>th</sup> day of December, 2021.

/s/ Andrew M. Capobianco  
Andrew Capobianco  
Georgia Bar No. 012592



## Court of Appeals of the State of Georgia

ATLANTA, April 04, 2023

*The Court of Appeals hereby passes the following order:*

**A23A0109. FORMULA CONSTRUCTION GROUP, LLC v. APPELT et al.**

After a \$10,000,000 default judgment was entered against it, Formula Construction Group, LLC filed a Motion to Set Aside the Final Judgment or, Alternatively, to Stay this Matter until a Transcript of the Damages Hearing is Finished and a Motion to Dismiss or, Alternatively, to Open Default. The trial court stamped the motions “denied” and added a note directing the plaintiff to submit a proposed order within ten days. The motions bearing the stamp “denied” and the court’s directive were entered on the record on November 10, 2021.<sup>1</sup> Formula filed a notice of appeal on December 8, 2021, describing the orders as “final orders disposing of the action.” We, however, lack jurisdiction.

A judgment is final and directly appealable “when it disposes of the entire controversy, leaving nothing for the trial court to do in the case.” (Citation and punctuation omitted.) *Bay Meadow Corp. v. Hart*, 276 Ga. App. 133, 134 (1) (622 SE2d 478) (2005); see also OCGA § 5-6-34 (a) (1) (a judgment is final “where the case is no longer pending in the court below”). Here, the “orders” on appeal directed the plaintiff to submit a proposed order within ten days. Thus, the orders clearly contemplated further action by both the plaintiff and the trial court, and they were not final. To appeal the order, Formula was required to comply with the interlocutory

---

<sup>1</sup> There is no indication in the record that the plaintiff subsequently filed proposed orders.



appeal procedures in OCGA § 5-6-34 (b). Its failure to do so deprives us of jurisdiction to consider this direct appeal, which is hereby DISMISSED.



*Court of Appeals of the State of Georgia*

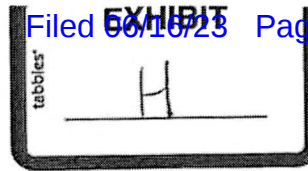
*Clerk's Office, Atlanta, 04/04/2023*

*I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court hereto affixed the day and year last above written.*

*Stephen E. Castle*

*, Clerk.*



## TOLLING AGREEMENT

This Tolling Agreement ("**Agreement**") is entered into by and between Formula Construction Group, LLC (hereinafter "**FCG**"), a Georgia limited liability company, on behalf of itself, its subsidiaries and other company affiliates, and Business Filings Incorporated ("**BFI**"), a Wisconsin corporation, on behalf of itself, its subsidiaries and other company affiliates (FCG and BFI are collectively referred to herein as the "**Parties**") as of the 14th day of October, 2022 (the "**Effective Date**").

### RECITALS

A. On September 13, 2022, FCG filed a civil action in the State Court of Gwinnett County, Georgia, styled *Formula Construction Group, LLC v. Business Filings Incorporated*, Case No. 22-C-05164-S2 (the "**Litigation**"), alleging claims against BFI concerning the services performed by BFI for FCG in relation to service of process for matter *Appelt v. Columns At Bentley Manor et al.*, Case No. 18EV004800, filed in the State Court of Fulton County, Georgia; and

B. The Parties wish to avoid the expense of litigation at this time in order to allow the Parties additional time to analyze information necessary to the prosecution and defense of the claims alleged against BFI and until final resolution of the currently pending appeal *Formula Construction Group, LLC v. Appelt*, Case No. A23A0109, currently pending in the Georgia Court of Appeals (the "**Appeal**"), provided that the rights of the Parties are not and will not be prejudiced due to any contractual claims limitation period and/or any statute of limitations-related defenses that may be asserted by the Parties against one another; and

C. During the continued period of negotiations or resolution, the Parties wish to continue to toll any applicable contractual limitations, statutes of limitations or similar defenses, and to provide for the retention of any and all legal or equitable actions or defenses that the Parties may have by entering into this Tolling Agreement.

NOW THEREFORE, for and in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, fully intending to be legally bound, agree as follows:

1. Tolling Period. The Tolling Period will begin as of September 13, 2022 (the "**Tolling Date**") and will end 45 days after a ruling on the Appeal by the Georgia Court of Appeals or any final decision on any subsequent appeal to the Supreme Court of Georgia, whichever is later, unless extended by mutual written agreement ("**Tolling Period**").

2. Tolling of Limitations. The Tolling Period shall not be included in computing any contractual limitations or statute of limitations for the Claims, nor will the Tolling Period be considered in support of a laches defense or any other time-based doctrine or defense, rule, or statute otherwise limiting any Party's right to preserve and prosecute any Claim including but not limited to the six (6) month renewal period contained in O.C.G.A. § 9-2-61. The Parties agree that BFI will not raise any challenge to any renewal of the Litigation pursuant to O.C.G.A. 9-2-61

based on invalidity of the pending Litigation. Nothing in this Agreement shall have the effect of reviving any claims that are otherwise barred by any statute of limitations prior to the Tolling Date. Each of the Parties agrees that it and they will not rely on, argue or assert, in response to any Claim that may be asserted against them by the other Party, that the Tolling Period should be included in calculating any contractual limitations, statute of limitations, period of repose or any defense related to those periods or dates.

3. Voluntary Dismissal of the Litigation. On the earlier of: (a) October 14, 2022, or (b) three (3) business days after this Agreement having been executed by all Parties hereto, FCG shall file a written notice of dismissal of the Litigation pursuant to O.C.G.A. § 9-11-41.

4. No Admissions. Nothing in this Agreement shall constitute an admission by any Party of any wrongdoing, liability, fault, waiver of any right or defense (except as provided in Section 2), or an admission as to any matter of law or fact. The Parties agree further that this Agreement will not be admissible for any purpose other than to rebut a defense based on the passage of time, delay or to defend against any claim, action, or other proceeding that may be initiated by one of the Parties against another in breach of this Agreement.

5. Entire Agreement. Unless specifically provided herein, this Agreement contains all the understandings and representations between the Parties with respect to its subject matter and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to its subject matter of this Agreement. This Agreement has been mutually drafted by both Parties, and neither party shall be deemed the drafter of this Agreement in the case of any ambiguity.

6. Counterparts. This Agreement may be executed in counterparts and by electronic signatures (e.g. PDF), each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

7. Binding Effect. This Agreement shall inure to the benefit of the Parties and their successors and assigns.

8. Representations and Warranties. Each of the persons executing this Agreement represents and warrants that he or she has the full legal power, capacity, and authority to bind the party for whom he or she is acting, and that this Agreement constitutes a binding legal obligation of the party, enforceable in accordance to its terms. Each Party represents and warrants by its execution of this Agreement that it has the right, power, legal capacity, and authority to enter into and perform all of its obligations arising under this Agreement and has conferred with legal counsel of its choosing as to the significance and legal effect of this Agreement.

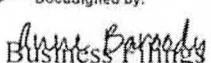
**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the Execution Date below.

DATED: October 14, 2022

DATED: October 14, 2022

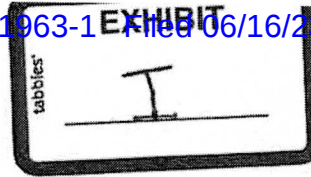
DocuSigned by:  
  
Formula Construction Group, LLC  
5422235554904BC...

By: \_\_\_\_\_  
Its Counsel

DocuSigned by:  
  
Business Finance Incorporated  
68E2BC9A531D470...

By: \_\_\_\_\_  
Its Counsel



IN THE STATE COURT OF GWINNETT COUNTY  
STATE OF GEORGIAFORMULA CONSTRUCTION GROUP,  
LLC,

Plaintiff,

v.

BUSINESS FILINGS INCORPORATED,

Defendant.

Case No. 22-C-05164-S2

NOTICE OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE

Pursuant to O.C.G.A. § 9-11-41(a)(1)(A), Plaintiff Formula Construction Group, LLC hereby voluntarily dismisses its Complaint against Defendant Business Filings Incorporated without prejudice. The parties shall each bear their own costs and expenses as against each other.

Respectfully submitted this 14th day of October, 2022.

LINDSEY &amp; LACY, PC

/s/ W. Thomas Lacy, Jr.

W. Thomas Lacy, Jr.

Georgia Bar No. 431032

Alexandre A. Kachin

Georgia Bar No. 130559

200 Westpark Drive, Suite 280  
Peachtree City, Georgia 30269  
Phone: (770) 486-8445  
Fax: (770) 486-8889  
[tlacy@llptc.com](mailto:tlacy@llptc.com)  
*Counsel for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day filed the within and foregoing **NOTICE OF VOLUNTARY DISMISSAL** using the Odyssey eFileGA system, which caused notification of such filing to be sent to all counsel of record as follows:

William J. Holley, II  
Anne Horn Baroody  
**Parker Hudson Rainer & Dobbs, LLP**  
303 Peachtree Street  
Suite 3600  
Atlanta, GA 30308

This 14th day of October, 2022.

LINDSEY & LACY, PC

/s/ W. Thomas Lacy, Jr.  
W. Thomas Lacy, Jr.  
Georgia Bar No. 431032  
Alexandre A. Kachin  
Georgia Bar No. 130559

200 Westpark Drive, Suite 280  
Peachtree City, Georgia 30269  
Phone: (770) 486-8445  
Fax: (770) 486-8889  
[tlacy@llptc.com](mailto:tlacy@llptc.com)  
*Counsel for Plaintiff*

IN THE STATE COURT OF GWINNETT COUNTY,  
STATE OF GEORGIAFORMULA CONSTRUCTION  
GROUP, LLC

CASE NO: 23-C-03353-S3

PLAINTIFF,

Vs.

BUSINESS FILINGS INCORPORATED

DEFENDANT,

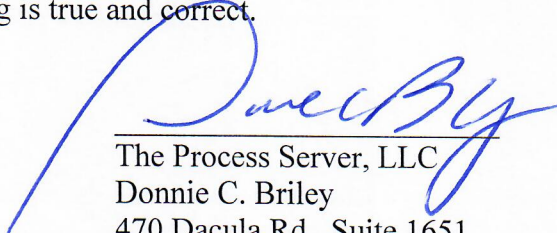
## AFFIDAVIT OF SERVICE

Personally appeared before me, the undersigned officer duly authorized to administer oaths, Donnie C. Briley, who, first being duly sworn on oath deposes and states that he is citizen of the United States and 18 years of age or older and is a party having no interest in the above-styled case. Affiant further states that on May 18<sup>th</sup>, 2023, at 11:09 a m, I served Business Filings Incorporation by serving Linda Banks, who is authorized to accept for registered agent CT Corporation System at her place of business located at 289 S. Culver Street, Lawrenceville, GA 30046 with the following: SUMMONS, GENERAL CIVIL AND DOMESTIC RELATIONS CASE FILING INFORMATION FORM, and COMPLAINT FOR BREACH OF CONTRACT AND NEGLIGENCE.

Linda Banks fits the following physical description: White female, 65-75 years old, 5'1" in height, 120-140 pounds, and gray hair.

I declare under penalty of perjury that the foregoing is true and correct.

This 22<sup>nd</sup> of May 2023  
Subscribed and sworn to  
Before me this 22<sup>nd</sup>  
Day of May 2023  
And notarized by me on this date.

  
The Process Server, LLC  
Donnie C. Briley  
470 Dacula Rd., Suite 1651  
Dacula, Georgia 30019  
(404) 788-8331

  
Notary Public

